

REMARKS

Claims 1-19 are pending in the present application. In the Office Action, claims 1, 3-4, 6-9, 11-12, 14-15, and 17-19 were rejected under 35 U.S.C. § 102 as allegedly being anticipated by Monroe, et al (U.S. Patent No. 6,697,421). Claims 2, 5, 10, 13, and 16 were rejected under 35 U.S.C. 103(a) as being obvious over Monroe in view of Fleming, et al (U.S. Patent No. 6,549,568). The Examiner's rejections are respectfully traversed.

Independent claims 1, 9, 15, and 19 set forth, among other things, a physical layer hardware unit for receiving unencrypted control codes and encrypted user data over a communications channel and transmitting an upstream data signal over the communications channel based on the control codes. In particular, claims 9, 15, and 19 set forth transmitting the upstream data signal over the communications channel based on transmission assignments defined by the control codes.

In contrast, Monroe describes a wireless modem 204. Data and configuration parameters 224 can be passed from a client computer 220 to the wireless modem 204, and data and configuration parameters 228 can be passed from the wireless modem 204 to the client computer 220. Data and initialization parameters 212 can be sent from a head-end server 216 to the wireless modem 204. See Monroe, 3, ll. 11-30 and Figure 2. A protocol stack 500 includes, among other layers, a physical layer 440 and a subnetwork independent convergence protocol layer 548, which is responsible for segmentation and re-assembly of data packets, encryption and decryption, and transmission control protocol header and data compression. See Monroe, col. 5, ll. 12-18 and Figure 5. However, Monroe fails to teach or suggest a physical layer hardware unit for receiving unencrypted control codes and encrypted user data.

For at least the aforementioned reasons, Applicants respectfully submit that claims 1, 9, 15, 19, and all claims depending therefrom are not anticipated by Monroe. Applicants request that the Examiner's rejections of claims 1, 3-4, 6-9, 11-12, 14-15, and 17-19 under 35 U.S.C. 102 be withdrawn.

Moreover, it is respectfully submitted that the pending claims are not obvious in view of Monroe and Fleming, either alone or in combination. To establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974). As discussed above, Monroe fails to teach or suggest a physical layer hardware unit for receiving unencrypted control codes and encrypted user data. The Examiner relies upon Fleming to teach control codes that include at least one of a power level assignment, a frequency assignment, and a time slot assignment. However, Fleming fails to remedy the fundamental deficiencies of the primary reference.

The cited references also fail to provide any suggestion or motivation to modify the prior art to arrive at Applicants' claimed invention. To the contrary, Applicants respectfully submit that Monroe teaches away from the present invention. In particular, Monroe teaches that a subnetwork independent convergence protocol layer 548 is responsible for encryption and decryption, which teaches away from a physical layer hardware unit for receiving unencrypted control codes and encrypted user data. It is by now well established that teaching away by the prior art constitutes *prima facie* evidence that the claimed invention is not obvious. *See, inter alia*, *In re Fine*, 5 U.S.P.Q.2d (BNA) 1596, 1599 (Fed. Cir. 1988); *In re Nielson*, 2 U.S.P.Q.2d (BNA) 1525, 1528 (Fed. Cir. 1987); *In re Hedges*, 228 U.S.P.Q. (BNA) 685, 687 (Fed. Cir. 1986).

For at least the aforementioned reasons, Applicants respectfully submit that the Examiner has failed to make a *prima facie* case that the present invention is obvious over Monroe in view of Fleming. Applicants request that the Examiner's rejections of claims 2, 5, 10, 13, and 16 under 35 U.S.C. 103(a) be withdrawn.

For the aforementioned reasons, it is respectfully submitted that all claims pending in the present application are in condition for allowance. The Examiner is invited to contact the undersigned at (713) 934-4052 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

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